BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by	)	
Competitive Local Exchange Carriers	)	
	)	

TIME WARNER TELECOM'S
COMMENTS IN SUPPORT OF PETITIONS FOR RECONSIDERATION

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July 23, 2001

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Time Warner Telecom ("TWTC"), by its attorneys, hereby submits these comments in support of certain of the petitions for reconsideration of the Commission's *CLEC Access Charge Order*.[1]

I. DISCUSSION

In these comments, TWTC addresses two issues raised in the petitions for reconsideration of the *CLEC Access Charge Order*: how to determine the relevant ILEC rate where a CLEC's service territory within an MSA overlaps with multiple ILEC service territories and the need to eliminate the rule that requires CLECs to set their interstate switched access rates at the ILEC level in any MSA in which a CLEC begins serving customers after the effective date of the rules adopted in the *CLEC Access Charge Order* (the "new market rule").

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1 *See Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order (Apr. 27, 2001) ("*CLEC Access Charge Order*").

First, the Commission should, as U.S. TelePacific argues, clarify that, where a CLEC may not tariff switched interstate access charges above the ILEC level, the CLEC set its tariffed rates based on an average (using a methodology established by the Commission) of the ILEC rates within the area in an MSA served by a CLEC. *See* U.S. TelePacific Petition at 7-10. This proposal should obviate unnecessary, costly, and time-consuming upgrades to CLEC billing systems while at the same time ensuring reasonable rate levels.

As U.S. TelePacific observes, the *CLEC Access Charge Order* does not specifically address the question of how a CLEC should set its interstate switched access charges in an MSA in which the CLEC may not tariff rates above the ILEC level and where the CLEC's service territory in the MSA overlaps with multiple ILECs. *See id.* at 3-4. As U.S. TelePacific also points out, it is not practical to require CLECs to charge different interstate switched access rates depending on the ILEC territory within an MSA in which the end user is located. Like U.S. TelePacific, TWTC's billing systems are currently incapable of billing different interstate switched access rates based on whether a particular line is located in one ILEC region or another within an MSA. TWTC's billing systems were designed based on the assumption that TWTC would charge the same switched interstate rate throughout an MSA, regardless of the location within the MSA of the line over which a communication originates or terminates. Moreover, if required to charge the same rate as the ILEC in which a line is located, TWTC would need to incur significant expense and time upgrading its billing systems.

The Commission could obviate the need for such expense while at the same time ensuring that CLEC access rates remain in line with the ILEC rates by permitting CLECs to set their rates based on some sort of average of the relevant ILEC rates. As U.S. TelePacific points out, such averaging could be accomplished in several different ways. For example, U.S. TelePacific suggests three possibilities: (1) a straight (i.e., unweighted) average of the interstate access charges of the ILECs in an MSA; (2) a weighted average based on the proportion of CLEC lines in the relevant ILEC territories in an MSA; or (3) a weighted average based on the relative traffic volumes carried by the ILECs in a particular MSA. *See id.* at 7-10. Regardless of the approach adopted by the Commission, however, it is critical that the system be simple and impose as few costs as possible on the relevant carriers.[2]

Second, TWTC argued in its petition for reconsideration that the Commission should repeal or at the very least delay the application of the new market rule. Not surprisingly, several other parties requested reconsideration of the same rule.

For example, Focal and US LEC argue, among other things, that they require a transition to the relevant ILEC rate for markets entered after the *CLEC Access Charge Order* rules go into effect just as much as they need such a transition for markets in which they began serving customers prior to the effective date of the new rules. *See* US LEC-Focal Petition at 8. Moreover, they point out that there is no apparent rational justification for treating two CLECs so differently for the purposes of setting tariffed interstate access charges simply based on the

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[2] By far the easiest approach to averaging would be to adopt a straight average requirement. The only potential problem with this approach is that it could create anomalies due to the fact that rates charged by ILECs that might serve a small portion of an MSA would be given the same weight as rates charged by ILECs that serve large portions of an MSA. This could create inefficient incentives for CLECs (*e.g.*, to sign up one customer in an ILEC region with high rates solely for the purpose of increasing the rate the CLEC can charge in other ILEC regions). However, the variation among ILEC carrier access rates should be largely eliminated once the Commission has completed the process of removing the universal service subsidies in those rates. This process is likely to have been largely completed by the time the new regulations governing CLEC access charges require that tariffed CLEC switched interstate access rates in all markets, not just new MSAs, be set at or below the ILEC rate. It follows that the implementation problems associated with setting rates for CLECs whose territories cover multiple ILEC territories are only a serious concern for markets affected by the new market rule. This is yet another factor, in addition to all of the others described below, that weighs in favor of eliminating the new market rule.

accident that one CLEC may have begun serving customers in a market before the *CLEC Access Charge Order* rules went into effect while another CLEC began serving customers after the rules went into effect. *Id.* at 10. US LEC and Focal imply by this that they, like TWTC, support the elimination of the new market rule in its entirety.

At the very least, US LEC and Focal assert that the new market rule should not apply to CLECs in markets in which they committed resources to entry before the new rules went into effect. They observe that negotiating of interconnection agreements; obtaining and preparing central office and collocation space; acquiring and installing facilities such as switches; provisioning interconnection trunks; and hiring personnel all must be accomplished before a CLEC can begin serving customers in a new geographic market. *See id.* at 8-9. The parties observe that this process consumes 8 or 12 months or even longer for any particular geographic market. *Id.* at 9. It is therefore clear, as TWTC pointed out in its petition, that CLECs that begin serving customers many months (in TWTC's case possibly a year) after the new rules go into effect would have actually begun committing resources to the new market before the new rules went into effect. As a result, US LEC and Focal ask that the Commission set the ILEC rate as the ceiling for CLEC tariffed interstate access charges only in those MSAs in which a CLEC had "made no investments or had no customers" prior to the effective date of the new rules. *See id.* at 10.

Similarly, TDS Metrocom asserts that it takes between 12 and 18 months "to plan and execute a new market deployment project." TDS Metrocom Petition at 18. TDS Metrocom therefore requests an appropriate transition period to allow CLECs to take advantage of the interim benchmarks in those MSAs in which the CLEC began the entry process into a new geographic market but had not begun serving customers before the *CLEC Access Charge Order* rules went into effect. *See* TDS Metrocom Petition at 18-19.

It is clear that these CLECs, like TWTC, require a transitional period to adjust to the new regulations governing CLEC interstate switched access charges just as much for geographic markets in which they will begin serving customers sometime in the future as for markets in which they began serving customers prior to June 20, 2001 (the effective date of the rules). While the other petitions for reconsideration in general focus on markets in which CLECs had already begun to commit resources to new entry prior to June 20, the point is equally valid for markets in which a CLEC begins the planning process after that date. As TWTC explained, firms rely on precisely the same marketing data to adjust their entry strategy in new markets that they use to adjust their businesses in existing markets. In both cases, the CLEC must test over time the combination of service offerings (the demand side) and network designs (the supply side) that work most effectively in the new regulatory environment. It follows that the new market rule should be eliminated in its entirety.

But at the very least, the Commission should change the new market rule to allow a CLEC to take advantage of the interim benchmark in MSAs in which the CLEC began committing resources to entry in reliance on the old regulatory regime. The Commission can either accomplish this by adopting the US LEC-Focal test (based on the time a CLEC began making investments) or the TWTC test (delaying the effect of the rule for 12 months). The former rule would have the advantage of being targeted narrowly only to those markets in which CLECs actually began committing financial resources in reliance on the old regulatory regime. However, the US LEC-Focal rule might be difficult to administer and could spawn numerous disputes as to, for example, how much investment is required for a particular market to qualify for the interim benchmark. The TWTC rule, on the other hand, would be simple to administer, and (based on the evidence thus far) would capture almost all markets in which CLECs began the planning process for entry based on the old regulations. Of course, any bright line test creates the risk of some over-inclusiveness and some under-inclusiveness. TWTC submits, however, that this risk is minimal given the consistent reports from CLECs that it takes them approximately one year to enter a market.

II. CONCLUSION

For the reasons described herein, the Commission should establish a simple mechanism to allow CLECs to set their switched interstate access charges based on an average of the relevant ILEC rates in an MSA. Furthermore, the Commission should eliminate the new market rule or at the very least apply it only to MSAs in which a CLEC begins serving customers for the first time more than 12 months after the effective date of the rules adopted in the *CLEC Access Charge Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2001, copies of the foregoing Comments in Support of Petitions for Reconsideration, filed by Time Warner Telecom were mailed, first class postage prepaid, unless otherwise indicated, to the following parties:

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